

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIZABETH HOWARD, ¹	§
	§ No. 21, 2012
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
DIVISION OF FAMILY	§ File No. 11-09-05TN
SERVICES,	§ Petition Nos. 11-29245
	§ 11-29241
Petitioner Below-	§
Appellee.	§

Submitted: May 24, 2012

Decided: June 8, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 8th day of June 2012, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1, her attorney’s motion to withdraw, and the responses of the appellee and the guardians *ad litem*, it appears to the Court that:

(1) The respondent-appellant, Elizabeth Howard (“Mother”), has filed an appeal from the Family Court’s December 20, 2011 order terminating her parental rights in her three children, Zelda and Zachary, born on November 21, 2003, and Elliot, born on July 31, 2005 (collectively, the

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated January 19, 2012. Supr. Ct. R. 7(d). In this Order, we also assign pseudonyms to the minor children.

“children”).² On appeal, Mother’s counsel has filed an opening brief and a motion to withdraw pursuant to Rule 26.1. Mother’s counsel submits that she is unable to present a meritorious argument in support of the appeal. In spite of being informed that she could supplement her attorney’s presentation, Mother has presented no issues for this Court’s consideration. The Division of Family Services (“DFS”) and the guardians *ad litem* have responded to the position taken by Mother’s counsel and have moved to affirm the Family Court’s judgment. We agree and affirm.

(2) The procedural history of this matter is as follows. DFS brought a termination of parental rights (“TPR”) petition against Mother on the ground of failure to plan³ with respect to all three children and on the ground of abandonment⁴ with respect to Zelda. Zelda was taken into DFS’s care by *ex parte* order of the Family Court dated August 3, 2010. On August 11, 2010, Mother appeared for a preliminary protective hearing and was appointed counsel. An adjudicatory hearing was held in the Family Court on August 23, 2011 with respect to Zelda. Mother failed to appear for the hearing. Zachary and Elliot were taken into DFS’s care by order of the Family Court dated August 25, 2010.

² The Family Court also terminated the parental rights of the children’s biological father (“Father”).

³ Del. Code Ann. tit. 13, §1103(a) (5).

⁴ Del. Code Ann. tit. 13, §1103(a) (2).

(3) An adjudicatory hearing for Zachary and Elliot was held on October 6, 2010, as was the dispositional hearing for Zelda. Again Mother failed to appear. At the hearing, Mother's case plan was entered into evidence. Her case plan included the following requirements: a) working with a parent aide; b) substance abuse evaluation and treatment; c) mental health treatment, including taking prescribed medication; d) involvement in the children's educational needs; e) securing stable housing; f) compliance with legal issues; and g) attending the children's medical appointments. Review hearings on the DFS petitions were held on December 28, 2010, March 22, 2011 and June 16, 2011. Mother failed to appear for the first two hearings, but did appear for the hearing in June 2011. Mother also appeared for the permanency hearing on August 22, 2011.

(4) At the permanency hearing on August 22, 2011, upon the application of DFS, the Family Court approved a change of goal from reunification to the concurrent goals of reunification and termination of parental rights. As of the date of the hearing, Mother had recently contacted Connections to address her mental health and substance abuse issues and had visited with Zelda once. She had made no progress on the other aspects of her case plan. Moreover, she had been incarcerated for a time. A two-day TPR hearing was held on November 14, 2011 and November 29, 2011. At

the TPR hearing, the Family Court heard testimony from the following individuals: a) the DFS permanency worker; b) two DFS treatment workers; c) the foster mother of Zachary and Elliot; d) the Connections social worker; e) the DFS social worker; f) the foster mother of Zelda; g) a crisis therapist; h) Father; and i) Mother.

(5) The testimony presented at the hearing established the following. Zelda has significant special needs. She has hydrocephalus, severe intellectual disabilities and autistic disorder. She requires 24-hour a day care and goes for weekly occupational therapy appointments at A.I. duPont Hospital. Mother visited with Zelda only once in February 2011. Zelda currently is in a foster home where she is thriving and her many emotional and physical needs are being met. Zachary and Elliot have no significant medical or psychological issues currently, but had developmental delays and behavior issues while living at their grandmother's house. They are now living in a foster home and have made progress educationally and socially, as reported by their foster mother. Mother has two other children aside from Zelda, Zachary and Elliot for whom she provides no care.

(6) After her birth, Zelda lived in a facility in Pennsylvania for children with developmental disabilities. Zelda later was transferred to the A.I. duPont Hospital. After Zelda came to A.I. duPont Hospital, DFS

investigated Mother's home and determined that Zelda could not be transferred there because Mother was unable to care for her. Zachary and Elliot spent the first years of their lives at their grandmother's house in Wilmington, Delaware. Mother stayed there sporadically, but did not provide for their care. Zachary and Elliot remained in their grandmother's home for a time after DFS became involved with them, but in August 2011 went into foster care when their grandmother was no longer able to care for them. Until Zachary and Elliot entered foster care, Mother saw them sporadically at their grandmother's house. During this time, DFS attempted to contact Mother concerning progress on her case plan, without success.

(7) From December 2010 until October 2011, Mother made no progress towards the goals set forth in her case plan. She spent time in jail during April, May and June of 2011. She tested positive for PCP and marijuana in August 2011, after submitting to a drug screen at Connections. Only in October 2011 did Mother see a doctor for treatment for her bipolar disorder and contact the Division of Vocational Rehabilitation. She participated in a culinary arts program, but did not graduate. As of the time of the TPR hearing, Mother had incurred new charges of shoplifting and criminal trespass, among others.

(8) This Court's review of the Family Court's decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.⁵ To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.⁶ The Delaware statute governing the termination of parental rights requires a two-step analysis.⁷ First, there must be proof of a statutory basis for termination.⁸ Second, there must be a determination that termination of parental rights is in the best interests of the child.⁹ Both requirements must be established by clear and convincing evidence.¹⁰

(9) In its December 20, 2011 order terminating Mother's parental rights, the Family Court, based upon the evidence presented at the TPR hearing, concluded the following. The children have been in the care of DFS for over one year. Mother has shown through her inaction that she is either unwilling or unable to assume legal and physical custody of them or pay for their support. Moreover, failure to terminate Mother's parental rights will result in emotional or physical risk to the children. Mother failed

⁵ *Wilson v. DFS*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

⁶ *Id.* at 440.

⁷ Del. Code Ann. tit. 13, §1103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

⁸ *Id.*

⁹ *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a) (listing the best interests factors).

¹⁰ *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).

to complete even one element of her case plan. She visited with Zelda only once during a period of 15 months. Mother is no better able to care for the children now than she was when they first came under the care of DFS.

(10) We have carefully reviewed the parties' submissions as well as the record below, including the transcript of the TPR hearing. We conclude that there is ample evidence supporting the Family Court's termination of Mother's parental rights, both on the statutory ground of failure to plan with respect to Zelda, Zachary and Elliot and the statutory ground of abandonment with respect to Zelda, and on the ground that termination is clearly in the best interests of the children. We, therefore, conclude that the judgment of the Family Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice